

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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JOHN KNIGHT, DONNA RUSSELL  
KNIGHT, CHARLES COLE, VIIU  
NILER, COUNTRY GLASS SHOP,  
AUNT SADIES, INC., AND  
SUSAN BOERMAN,

Plaintiffs,

v.

CHRISTMAS TREE SHOPS, INC.

Defendant.

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**Case No. 04 12698 JLT**

**CHRISTMAS TREE SHOPS, INC.'S OPPOSITION TO  
PLAINTIFFS' MOTION TO COMPEL**

Defendant Christmas Tree Shops, Inc. ("CTS") respectfully opposes plaintiffs' entirely avoidable motion to compel the deposition of CTS Chief Executive Officer, Charles Bilezikian, because, as plaintiffs have long known, Mr. Bilezikian is out of the country on a business trip and therefore was made available for deposition on two separate dates before he left. Though not disclosed in Plaintiffs' Motion to Compel, CTS offered those two available dates -- December 16 and 22 -- to plaintiffs' counsel on December 7, 2005, the day after the Court ordered Mr. Bilezikian's deposition. Plaintiffs' counsel rejected both dates, as well as the opportunity to take the deposition by telephone, claiming that both he and his co-counsel were completely unavailable.

On December 7, 2005, when CTS offered the two dates for Mr. Bilezikian to be deposed, its counsel explained to plaintiffs' counsel that Mr. Bilezikian was already committed to an annual business trip out of the country from December 28, 2005 through

February 6, 2006, and that these plans could not be changed. See Emails of Peter Biagetti dated December 7, 8 and 12, 2005, attached hereto as Exhibit 1. As Mr. Bilezikian has affirmed, this trip was arranged nearly one month before the Court ordered his deposition, is extremely important to CTS because it impacts the company's most important selling season, and includes a very full itinerary of appointments with vendors spread across 11 stops in Hong Kong, China, and Thailand. See Affidavit of Charles Bilezikian at ¶¶ 2-4 (filed herewith).

Plaintiffs' counsel rejected all of the proposed dates, claiming conflict with a court hearing on December 16 and "another conflict on December 22." See Letter of Joel Joseph dated December 12, 2005, attached hereto as Exhibit 2. Moreover, plaintiffs' counsel never responded to the proposal that his co-counsel or a colleague depose Mr. Bilezikian on the proffered dates, in person or by telephone, and never proposed any date on which the deposition could be taken upon Mr. Bilezikian's return to the United States.<sup>1/</sup>

Finally, Mr. Bilezikian now has affirmed under oath what CTS has reported to plaintiffs throughout, that *he has no knowledge of the design, manufacture, advertising, sales, or profitability of the products at issue in this case.* See Affidavit of Charles Bilezikian at ¶ 5. All of those issues, however, have been explored in detail in the six depositions of CTS witnesses that plaintiffs already have taken, and in the more than three hundred pages of CTS business records already produced. In the wake of this

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<sup>1/</sup> Plaintiffs also misleadingly claim that Mr. Bilezikian was available for "only two days during the seven-week period remaining in discovery." See Plaintiffs' Motion to Compel. Plaintiffs, however, have known since the outset of discovery that CTS objected to the deposition of Mr. Bilezikian (see Defendant Christmas Tree Shops, Inc.'s Assented-To Motion to Amend the Discovery Order of June 30, dated September 16, 2005), but chose to wait until December 5, 2005 -- five days *after* the close of the original discovery period -- to move the Court to compel his deposition. Had plaintiffs moved earlier, more time and dates for the deposition of Mr. Bilezikian would have been available.

complete and specific discovery, and given the refusal of plaintiffs' counsel and co-counsel to accept any of the dates proffered for Mr. Bilezikian's deposition, Plaintiffs' Motion to Compel should be denied. See Fed. R. Civ. P. 26(b)(2) (stating that the extent of discovery "shall be limited by the court if it determines that ... the burden ... of the proposed discovery outweighs its likely benefit, taking into account ... the importance of the proposed discovery in resolving the issues" in the case).

Respectfully submitted,

**CHRISTMAS TREE SHOPS, INC.**

By its attorneys:

/s/ Peter A. Biagetti

Peter A. Biagetti, Esq., BBO# 042310  
Carrie Kei Heim, Esq., BBO# 652147  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, PC  
One Financial Center  
Boston, MA 02111  
Tel. 617-542-6000  
Fax 617-542-2241

Dated: January 9, 2006

## Heim, Carrie Kei

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**From:** Biagetti, Peter  
**Sent:** Monday, December 12, 2005 1:46 PM  
**To:** 'josephassociates@comcast.net'  
**Cc:** Heim, Carrie Kei; 'kenneth.bradley@bedbath.com'  
**Subject:** RE: Bilezikian Deposition

Hello Joel. I've reviewed with my client your response of earlier today, and confirmed again that Mr. Bilezikian cannot--and in fairness should not be forced to--change his long-standing business trip abroad to suit your and your colleagues' schedules. Our offer of the two below-mentioned dates will remain open until tomorrow at 5 pm. After that, we shall assume that you, regrettably, have chosen to file a motion.

Peter A. Biagetti | Attorney  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
One Financial Center | Boston, MA 02111  
Phone: 617.348.4472 | Fax: 617.542.2241  
Cell: 508.277.6945  
E-mail: pbiagetti@mintz.com  
Web: www.mintz.com

-----Original Message-----

**From:** Biagetti, Peter  
**Sent:** Thursday, December 08, 2005 3:22 PM  
**To:** 'josephassociates@comcast.net'  
**Cc:** Heim, Carrie Kei; 'kenneth.bradley@bedbath.com'  
**Subject:** RE: Bilezikian Deposition

Hello Joel. We have confirmed that Mr. Bilezikian's business trip, an annual one to meet with vendors, extends from 12/28 through 2/6. Please let me know by tomorrow whether you or a colleague will take the deposition on 12/16 or 12/22, or whether we no longer need to protect those two dates. Thanks.

Peter A. Biagetti | Attorney  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
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Cell: 508.277.6945  
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Web: www.mintz.com

-----Original Message-----

**From:** Biagetti, Peter  
**Sent:** Wednesday, December 07, 2005 8:50 PM  
**To:** 'josephassociates@comcast.net'  
**Cc:** Heim, Carrie Kei; 'kenneth.bradley@bedbath.com'  
**Subject:** Re: Bilezikian Deposition

He will not change his plans. We've offered two dates. You, Mr. Chaika, or a colleague can make time to do this if it truly is vital to your case.

-----Original Message-----

From: josephassociates@comcast.net  
To: Biagetti, Peter  
Sent: Wed Dec 07 19:05:55 2005  
Subject: RE: Bilezikian Deposition

Sorry isn't good enough. HAVE him change his plans, or we will move for sanctions.

----- Original message -----

From: "Biagetti, Peter" <PABiagetti@mintz.com>

I believe he's gone the entire month. Sorry.

Peter A. Biagetti | Attorney  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
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E-mail: pbiagetti@mintz.com <mailto:pa@pbiagetti@mintz.com>  
Web: www.mintz.com <http://www.mintz.com/>

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From: josephassociates@comcast.net [mailto:josephassociates@comcast.net]  
Sent: Wednesday, December 07, 2005 5:41 PM  
To: Biagetti, Peter  
Subject: Re: Bilezikian Deposition

I will be unavailable on those dates. When is he available in January?

Joel D. Joseph

----- Original message -----

From: "Biagetti, Peter" <PABiagetti@mintz.com>

Hello Joel. I have just learned that Mr. Bilezikian will be out of the country for much of the next two months, but is available for deposition on December 16 or 22. Please let me know by tomorrow which of these dates works best for you. I believe the deposition will last less than an hour, so you might also consider taking it by telephone. Thanks.

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**Heim, Carrie Kei**

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**From:** Biagetti, Peter  
**Sent:** Wednesday, December 07, 2005 4:18 PM  
**To:** 'josephassociates@comcast.net'  
**Cc:** Heim, Carrie Kei  
**Subject:** Bilezikian Deposition

Hello Joel. I have just learned that Mr. Bilezikian will be out of the country for much of the next two months, but is available for deposition on December 16 or 22. Please let me know by tomorrow which of these dates works best for you. I believe the deposition will last less than an hour, so you might also consider taking it by telephone. Thanks.

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Law Offices of  
Joel D. Joseph

7272 Wisconsin Avenue, Suite 300  
Bethesda, Maryland 20814  
(301) 941-1989 Fax (240) 209-4000

via email  
December 12, 2005

Peter Biagetti  
Mintz, Levin  
One Financial Center  
Boston, Massachusetts 02111

Re: Knight v. Christmas Tree Shops

Dear Peter,

I was in Chicago for a hearing on Thursday and Friday. This is the first opportunity that I have had to respond to your recent emails. I have a hearing in Los Angeles on December 16 and another conflict on December 22.

The court ordered the deposition to take place before the end of January. I must again insist that you make Mr. Bilezikian available one day in January. I am available every day of January.

For your convenience, we can take the deposition at your office. Or, if Mr. Bilezikian will be in a certain U.S. city, we may be able to arrange the deposition there.

However, for you to state that Mr. Bilezikian will not change his business plans for a deposition is outrageous and contemptuous, and I believe the court will agree.

I am giving you one last chance to make him available before we file a motion for sanctions.

Sincerely yours,

/s/

Joel D. Joseph